

UNITED STATES DISTRICT COURT
Northern District of California

BOSTIK, INC,

No. C 12-4021 MEJ

Plaintiff,

**ORDER DENYING MOTION FOR
DEFAULT JUDGMENT**

v.

J.E. HIGGINS LUMBER CO., et al.,

Re: Docket No. 8

Defendants.

Pending before the Court is Plaintiff Bostik, Inc.'s Application for Default Judgment against J.E. Higgins Lumber Company, filed September 20, 2012. Dkt. No. 8. Federal Rule of Civil Procedure 55 governs the entry of default by the clerk and the subsequent entry of default judgment by either the clerk or the district court. The Ninth Circuit Court of Appeals has stated that Rule 55 requires a "two-step process," consisting of: (1) seeking the clerk's entry of default, and (2) filing a motion for entry of default judgment. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986) ("Eitel apparently fails to understand the two-step process required by Rule 55."); *Symantec Corp. v. Global Impact, Inc.*, 559 F.3d 922, 923 (9th Cir. 2009) (noting "the two-step process of 'Entering a Default' and 'Entering a Default Judgment'"). In this case, default has not been entered against J.E. Higgins Lumber Company. Thus, without first obtaining an entry of default against J.E. Higgins, Bostik, Inc.'s motion for default judgment is improperly before this Court. Thus, the motion is DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

Dated: September 21, 2012



Maria-Elena James
Chief United States Magistrate Judge